In the High Court of Punjab and Haryana at Chandigarh

C.R. No. 953 of 2006
Date of decision:15-9-2006

Prem Singh .....Petitioner

Versus

Arjan Singh and another .....Respondents

CORAM: Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.H.S.Diwana, Advocate, for the petitioners
Mr. S.S.Rangi, Advocate, for the respondents.

VINOD K.SHARMA,J.

The petitioner by way of this revision petition has challenged the ex-parte judgment dated 26-7-1999 (Annexure P-1) as also ex-parte order dated 3-9-1998 as well as the order dated 17-2-2004 passed by the learned Civil Judge (Senior Division), Fatehgarh Sahib dismissing the application moved by the petitioner under Order 9 Rule 13 of the Code of Civil Procedure for setting aside ex-parte orders as also the order dated 22-11-2005 passed by the Additional District Judge, Fatehgarh Sahib, dismissing the appeal filed by the petitioner.

The petitioner had moved the application for setting aside the ex-parte judgment and decree on the ground that he was never

served in the civil suit and that the ex-parte decree dated 26-7-1999 was wrongly passed against him.

It was the case of the petitioner that the plaintiff-respondent had managed to obtain a false report in connivance with the Process Server, who had never gone to the petitioner. It was the further case of the petitioner that no Mundadi was effected in the village and a false report was procured regarding the same. It was also the case of the petitioner that there was no Chowkidar in the village by the name of Kashmira Singh and thus claimed that the ex-parte order should have been set aside.

It was the further case of the petitioner that on coming to know about the ex-parte decree on 26-5-2000 he met one Raj Kumar, who offered his help to him being a Clerk of an Advocate. The case of the petitioner further was that a sum of Rs. 7,000/- was paid to Shri Raj Kumar for getting the case decided in his favour, out of which Rs. 2500/- were paid and the remaining amount was agreed to be paid after one month. The petitioner further paid a sum of Rs. 2500/- to Raj Kumar and on 19-3-2002 the balance amount of Rs 2,000/- was paid.

It was also the case of the petitioner that he was told by the said Shri Raj Kumar that he should not worry about the matter and he would get the execution application of the respondent dismissed. Thereafter the petitioner contacted the Clerk of Shri H.S.Diwana, Advocate on 12-7-2002 and apprised him of the facts of the case. It was therefore found that Shri Raj Kumar had wrongly held out to the

petitioner that the application was got dismissed by him on 19-3-2002.

It was also averred by the petitioner that Shri Raj Kumar had also approached Shri H.S.Diwana, Advocate, as Raj Kumar was the Clerk of the opposite Counsel in the case. Shri Raj Kumar, is alleged to have handed over the Vakalatnama to Shri H.S.Diwana, Advocate, and a sum of Rs. 2200/- was also paid to him. It was also averred that it was assured by the said Raj Kumar that the matter would be settled out of Court and for this purpose 2/3 adjournments were taken and thereafter Shri Raminder Singh had been attending the Court. Later on, on enquiry, it was found by the petitioner that the execution application was still pending and there was a delay of 790 days on account of fraud committed upon him.

The petitioner, therefore, sought the setting aside of the ex-parte judgment and decree as also the said condonation of delay of 790 days in moving the application.

The application was contested by the respondent herein and the allegations made by the petitioner were denied. It was claimed by the plaintiff-respondent that the petitioner was duly served in the proceedings of the civil suit and the allegation that the Process Server had not gone to serve the petitioner was also denied. It was claimed by the plaintiff-respondent that the ex-parte decree was correctly passed. The allegation of fraud was also controverted and the application for condonation of delay was also contested by claiming that there was no ground to condone the delay of 790 days.

On the pleadings of the parties, following issues were framed:-

"1. Whether there are sufficient grounds to set aside the ex-parte decree dated 26-7-1999 ? OPA
2. Whether the application is within limitation.?OPA
3. Relief."

Before the learned trial Court, the applicant-petitioner appeared as AW-1 and also examined AW-2 Pargat Singh, AW-3, Raminder Singh, and closed his evidence, whereas the plaintiff-respondent examined Rajinder Singh as RW-1, Arjan Sngh as RW-2, Charanjit Singh, Process Server, as RW-3 and closed his evidence.

On appreciation of the evidence led by the parties, the learned trial Court vide order date 17-2-2004 dismissed the application for condonation of delay as well as the application under Order 9 Rule 13 CPC filed by the applicant-petitioner.

In appeal, the learned Additional District Judge considered the matter and found that the plea of the petitioner that no Munadi was effected in village, was wrong on the ground that Kashmira Singh was not the Chowkidar of village, rather Banta Singh was the Chowkidar of the village. Thus, the story of Raj Kumar having played a fraud upon the petitioner was also not accepted, rather the learned lower Appellate Court came to the conclusion that according to para 8 of the application moved under Order 9 Rule 13 CPC , the petitioner had claimed that he came to know about the ex-

parte decree on 26-7-1999. In addition thereto, the learned Additional District Judge also took note of the fact that report Exhibit R-3 given by RW-3 Charanjit Singh, Process Server, also proved that he had gone to village Lakhanpur for effecting service on the applicant-petitioner Prem Singh and service was effected upon him. The report Exhibit R-3 further shows that Prem Singh petitioner had concealed himself in the house for evading service and accordingly notice was affixed on his house. The report of Munadi was also proved on record which was not only signed by the Chowkidar, but also attested by the members of the Panchayat. On scrutiny of evidence, the learned lower Appellate Court affirmed the findings recorded by the trial Court regarding service of the petitioner. The learned Courts below did not find force in the story put-forth by the petitioner having contacted Shri Raj Kumar, Clerk of Shri H.S.Diwana, Advocate, as claimed by him and accordingly it was held that no sufficient grounds were made to condone the delay.

Learned Counsel for the petitioner again in this Court reiterated the same story and contended that as the fraud was played upon the petitioner, therefore, it was a fit case where the delay ought to have been condoned and ex-parte decree set aside.

I have considered the contentions raised by the learned counsel for the petitioner and find no force in the same.

The Courts below on appreciation of evidence on record came to a positive conclusion that the petitioner was duly served in

the suit, but he chose not to appear and therefore, there was nothing wrong in ordering ex-parte decree against him. Learned Courts below also held that the petitioner had failed to show any sufficient grounds for condonation of delay. There is no error in exercise of jurisdiction by the learned Courts below which may call for interference by this Court.

Accordingly, the civil revision is dismissed.

15-09-2006 **(VINOD K.SHARMA)**
'dls' **JUDGE**